IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. CHARLES DENNIS HAWKINS, Appellant.	No. 37945-7-II UNPUBLISHED OPINION

Houghton, J. — Charles Hawkins appeals from the denial of his CrR 8.3(b) motion to dismiss, arguing that the trial court failed to enter written findings of fact and conclusions of law. He also filed a pro se statement of additional grounds (SAG), raising multiple issues. Finding no error, we affirm the denial of his motions.[1]

FACTS

In October 1986, the State charged Hawkins and his brother, David,[2] with first degree murder. During arraignment, the trial court appointed Jeremy Randolph to represent David. Randolph was not present at that time. After speaking with the prosecutor, Randolph learned that Dawn Edeburn, David's girl friend, was a potential witness. Randolph had previously represented Edeburn in an unrelated matter. Because of the potential conflict, Randolph moved to withdraw

[1] A commissioner of this court initially considered Hawkins's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

[2] For clarity, we refer to David by his first name.

from representing David on October 23, 1986. The trial court appointed a new attorney to represent David. At the time of removal, Randolph had not represented David in any way nor had he learned any confidential information. Randolph later became the elected prosecutor in Lewis County.

A jury convicted Hawkins of first degree murder, and the trial court sentenced him to serve 600 months to life in prison. We affirmed his judgment and sentence but reduced his sentence to a determinate 600 months. *State v. Hawkins*, 53 Wn. App. 598, 608, 609, 769 P.2d 856 (1989). The Supreme Court denied review on June 28, 1989, *State v. Hawkins*, 113 Wn.2d 1004, 777 P.2d 1054 (1989), and we issued mandate on July 31, 1989.

In 2006 and 2007, Hawkins filed post-conviction motions for appointment of counsel to exclude Randolph and the entire Lewis County Prosecutor's Office from his case because of Randolph's alleged conflict of interest, for dismissal of his conviction for governmental misconduct under CrR 8.3(b) because of Randolph's participation in Hawkins' earlier post-conviction motions, and for a new trial based on an alleged incorrect jury instruction. On June 16, 2008, the trial court denied all of Hawkins's motions. He appeals.

ANALYSIS

Hawkins argues that we should remand the case to the trial court for entry of written findings and conclusions supporting the denial of his CrR 8.3(b) motion. Under CrR 8.3(b),

> The court, in furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The court shall set forth its reasons in a written order.

But where a trial court fails to set forth written reasons for its decision on a CrR 8.3(b) motion, we do not remand solely to complete the formality of adding written reasons when the reasons are evident from the trial court's oral opinion. *State v. Wilson*, 149 Wn.2d 1, 9 n.5, 65 P.3d 657 (2003). The trial court orally explained its reasons for denying Hawkins's motion,

> THE COURT: All right. This case is one of the series of post convictions and motions brought after an unsuccessful appeal, homicide conviction. We are now well past the one-year time, and while Mr. Hawkins is perfectly correct in his statement in the briefs that he's entitled to retain counsel at any point that he wishes, there is no entitlement at this point in time to appointed counsel on this initial hearing on a post conviction restraint petition.
>
> The ADA does not implicate the right to appointed counsel for people who feel that they are not sufficiently intelligent or educated to represent themselves.
>
> As to Mr. Randolph's alleged conflict, because he was briefly appointed to represent a co-defendant, that appointment is a ministerial function in and of itself does not create any sort of attorney/client relationship. It requires acceptance of the appointment by counsel, and contact with a defendant to create that relationship.
>
> Mr. Randolph, in essence, chose not to accept the appointment for ethical reasons, came to the court, set those reasons forth on the record. The trial judge agreed. And it has not been established, in fact, it's been established to the contrary that there was no attorney/client relationship between Mr. Randolph and David Hawkins. And, therefore, there's no basis for any claim of an error because of his subsequent representation of the state in this matter.
>
> It doesn't matter, really, what Mr. Randolph's reasons for withdrawing were, frankly, and whether or not those reasons were warrant sufficient. The plain and simple fact is, Mr. Randolph did not represent David Hawkins at any time, didn't have an attorney/client relationship with Mr. Hawkins.
>
> Because there is no conflict of interest, there's no basis to exclude either Mr. Randolph or the Prosecutor's Office from these proceedings.
>
> While it is true that Mr. Randolph had, prior to this case, represented somebody who turned out to be a witness, that information was known or easily could have been known; it's a matter of public record. We are well past the one-year time frame as to that issue. And, in addition, that fact in and of itself doesn't create any sort of conflict. Just the mere fact of representation wouldn't create any kind of a conflict of interest that would require Mr. Randolph's exclusion from the prior trial.
>
> Lastly, as to the accomplice instruction, Mr. Hawkins misapprehended the Court of Appeals' opinion or just took part of a sentence that needed to represent -- or re-address (phonetic). The accomplice instruction used in this case that

> references the crime rather than a crime is the specific instruction that has been approved by our Court of Appeals and Supreme Court. So there is no error there.
>
> So, finding no error and no violations, I will deny Mr. Hawkins' motions.

Report of Proceedings (RP) at 7-9.

Hawkins does not argue the insufficiency of these findings and conclusions, only that the trial court should have entered them in writing. The trial court's reasons are evident from its oral ruling. *Wilson*, 149 Wn.2d at 9 n.5. Hawkins's argument fails.

STATEMENT OF ADDITIONAL GROUNDS

In his SAG, Hawkins argues that the trial court erred in denying his motion for appointed counsel because he is mentally disabled and the Americans with Disabilities Act (ADA) requires the appointment. But he fails to show that he has a qualifying disability under the ADA, or that the ADA requires the appointment of counsel in collateral review.

Hawkins also argues in his SAG that (1) the trial court denied him a fair trial when it denied his motion, (2) we should recall mandate because we did so in his brother's case, (3) Randolph should not have participated in his post-conviction motions because he served as defense counsel to one of the trial witnesses, and (4) the current Lewis County Prosecutor and his deputies should not participate due to Randolph's prior representation of a witness. A petitioner must move for collateral attack on a judgment and sentence within one year after the judgment becomes final unless the petitioner shows that a statutory exception applies under RCW 10.73.100; RCW 10.73.090(1). Hawkins's judgment became final on July 31, 1989, when we issued the mandate. RCW 10.73.090(3)(b). He fails to show that any exception applies. His collateral attacks on his judgment and sentence are therefore time-barred, and we do not review

them further.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Houghton, J.

We concur:

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Quinn, Brintnall, J.

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Penoyar, A.C.J.